

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

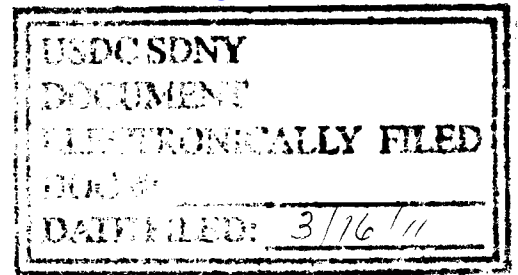
GERALD L. FRYAR,

Petitioner,

v.

JAMES WALSH, Superintendent, Sullivan
Correctional Facility,

Respondent.



07 Civ. 6683 (RO)

ORDER

OWEN, District Judge:

Pro se Petitioner filed a petition for a Writ of Habeas Corpus (“Petition”) pursuant to 28 U.S.C. § 2254, challenging his conviction for the crime of Burglary in the Second Degree (N.Y. Penal Law 140.25(2)).¹ Petitioner seeks habeas relief on the grounds that he was denied the right to a fair trial for the following reasons: the impermissible admission of hearsay evidence at trial, the Prosecutor’s impermissible vouching for the credibility of one of the People’s witnesses on summation, inferences Prosecutor made of sexual motivation during summation, and improper exercise of peremptory challenges by Prosecutor.

Magistrate Judge Lisa Margaret Smith filed a Report and Recommendation (the “Report”) on August 17, 2010, in which she recommended that the petition be denied in full. (Docket Entry No. 13.) On August 20, 2010, this case was transferred to this Court. (Docket Entry No. 14). On September 23, 2010, Petitioner was granted his request for a ninety-day

¹ The factual and procedural history behind the crime and Petitioner’s conviction are summarized in the August 17, 2010 Report and Recommendation of Magistrate Judge Lisa Margaret Smith, and will not be repeated here.

extension of time to file objections to the Report. (Docket Entry No. 15). On January 4, 2011, this Court granted Petitioner an extension of time to file objections to the Report until January 28, 2011. Docket Entry No. 16). Petitioner has not filed objections to the Report and Recommendation.

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Where no timely objection has been made by either party, a district court need only find that “there is no clear error on the face of the record” in order to accept the Report and Recommendation. *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted).

This Court has reviewed the Report and Recommendation of Magistrate Judge Smith and finds that it is well-reasoned and supported by law. Accordingly, this Court adopts it in its entirety. The Petition is therefore hereby DISMISSED. Additionally, as Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability shall not issue. See 28 U.S.C. § 2253(c)(2); *Lucidore v. N.Y. State Div. of Parole*, 209 F.3d 107, 112 (2d Cir. 2000). This Court further finds that an appeal from this Order would not be taken in good faith. See *Coppedge v. United States*, 369 U.S. 438 (1962).

SO ORDERED.

March 15, 2011



RICHARD OWEN
UNITED STATES DISTRICT JUDGE